United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1905.

No. 1511.

ALBERT McINTOSH, APPELLANT,

vs.

JAMES W. GREEN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 25, 1905.

In the Court of Appeals of the District of Columbia.

ALBERT McINTOSH, Appellant,
vs.
JAMES W. GREEN.
No. 1511.

a Supreme Court of the District of Columbia.

ALBERT McINTOSH, Complainant,
vs.
JAMES W. GREEN, Defendant.
No. 24258. Equity.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Original Bill.*

Filed October 22, 1903.

In the Supreme Court of the District of Columbia.

ALBERT McINTOSH, Complainant,
vs.
JAMES W. GREEN, Defendant.
Equity. No. 24258.

To the honorable justice- of the supreme court of the District of Columbia, holding an equity court:

Complainant states as follows:

1. That he is a citizen of the United States and a resident of the District of Columbia and he files this bill in his own right as the equitable owner entitled to a conveyance of the legal title of the real estate hereinafter mentioned.

2. That the defendant is a citizen of the United States a resident of the District of Columbia and is sued in his own right as a trustee holding the legal title in trust for complainant.

3. That during the month of June, 1902 complainant by his agent entered into an agreement with the Union Savings Bank of

Washington, D. C. to purchase lot forty-one (41) in Wright and Cox's subdivision of part of Pleasant Plains as per plat recorded in Liber No. 2 at folio- 24 and 25 of the records of the surveyor's office of the District of Columbia at and for the cash sum of twenty-six hundred ($2600.00) dollars.

4. That after arranging for the purchase of said real estate
2 through his agent, complainant saw the defendant and asked what he would charge to permit complainant to have said real estate transferred to complainant's daughter, Hattie McIntosh, through complainant's name. Complainant explained to defendant at the time that he was known as an agent by the Union Savings Bank people and desired to have the conveyance by the Union savings bank first made to a different party and then by the said party to complainant's daughter as aforesaid. Defendant agreed to accept ten ($10.00) dollars to be paid to defendant within a reasonable time after the completion of the details of said purchase as the full payment for allowing the title to said real estate to pass through his name to complainant's daughter. That defendant rendered no service and performed no duty with respect to the purchase of said real estate except that of trustee for complainant and this was fully understood by defendant at the time.

5. That complainant arranged through his agent to negotiate two loans on said real estate; the first loan amounting to two thousand five hundred ($2500.00) dollars at six per cent. and the second loan amounting to three hundred ($300.00) dollars, at ten per cent. but after the payment of commissions to complainant's agent, the fees to the title company and other expenses incident thereto, there was a shortage or deficiency, according to complainant's recollection, of about forty ($40.00) dollars to be paid to the Columbia Title Company before the said company would record the papers; that complainant requested defendant to loan him the necessary amount to close with the said title company and promised to repay defendant the amount advanced by him before the transfer was made to complainant's daughter as aforesaid. Defendant agreed and advanced the necessary amount, being the sum of about forty
3 ($40.00) dollars according to complainant's recollection, and immediately thereafter the papers were recorded by the title company. The deed of said real estate is recorded in Liber No. 2660 at folio 335 *et seq.* and the deeds of trust in Liber No. 2660 at folio 337 *et seq.* and at folio 341 *et seq.* and complainant prays that the same may be read at the hearing of this cause, a release of second trust in Liber No. 2731 folio 137 *et seq.*

6. That complainant has offered a number of times since to settle with defendant and pay him the ten ($10.00) dollars agreed heretofore to be paid to defendant and also pay the sum of forty ($40.00) dollars advanced with interest together with his other expenses incurred on condition that defendant execute and deliver a deed in fee simple to complainant's daughter, but defendant has each time refused to accept the money justly and equitably due to him and

defendant has refused to execute and deliver the deed of conveyance of said real estate as he ought in equity and good conscience to do to complainant's daughter.

7. That said real estate rents for about forty ($40.) dollars per month and from about July 1902 up to July 1903, the rents were collected and applied to the payment of the second loan and the interest on the first trust and taxes; that from about July 1903, up to the present time the rents and profits from said real estate have been collected by defendant and unjustly and fraudulently appropriated to his own use.

Complainant therefore prays:

1. That this honorable court will pass a decree commanding and directing the defendant to execute a deed in fee simple of the said real estate to complainant's daughter, Hattie McIntosh.

4 2. That defendant be required by decree of this honorable court to render an account of all the rents and profits derived from said real estate.

3. That a receiver may be appointed by this honorable court to collect all the rents and profits and hold the same subject to the order of this court.

4. That the United States writ of subpœna may issue to said James W. Green commanding him to appear and answer the exigency of this bill. The oath to the answer is hereby expressly waived.

5. That complainant may have such other and further relief as the nature of the case may require.

ALBERT McINTOSH.

I do solemnly swear that I have heard read the bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief, I believe to be true.

ALBERT McINTOSH.

Subscribed and sworn to before me this 21st day of Oct. 1903.

[SEAL.] GEO. E. TERRY,
Notary Public, D. C.

JOSEPH H. STEWART,
Solicitor for Complainant, 609 *"F" St. N. W.*

5 *Answer.*

Filed November 3, 1903.

In the Supreme Court of the District of Columbia.

ALBERT MCINTOSH, Complainant,
vs.
JAMES W. GREEN, Defendant. } Equity. No. 24258, Docket 54.

The Answer of the Defendant, James W. Green, to the Bill of Complaint Filed in the Above Entitled Cause.

The said defendant reserving all and all manner of exceptions to the said bill of complaint, for the many imperfections appearing therein, and to so much thereof, as he is advised is material for him to answer, answering says as follows, to-wit:—

1st. The said defendant answering paragraph one, (1), of the said bill of complaint, emphatically denies that said complainant is the equitable owner and entitled to a conveyance of the legal title of the real estate mentioned and described in the said bill of complaint.

2nd. That said defendant answering paragraph two (2), of the complainant's bill filed herein, admits that he is a citizen of the United States and a residence of the District of Columbia, but deny that he is a trustee holding a legal title to the said real estate mentioned in said bill of complaint, in trust for complainant, but said defendant avers that he holds the equitable title to the said real estate in his own right, and is entitled to the conveyance of
6 the legal title to said property, as soon as the money due under and by virtue of a certain promissory note secured by a certain deed of trust upon said real estate, is paid and the said note cancelled, together with whatever interest that is due or may be due thereon.

3rd. That said defendant answering paragraph three (3), of said bill, avers that he has no knowledge of any transaction, that said complainant or said complainant's agent, had with the Union Saving- Bank of Washington, District of Columbia, in regard to the purchasing of the said real estate set forth and described in paragraph three (3), of the bill of complaint filed herein, and he therefore cannot admit nor deny the same, but ask- that strict proof be had thereof.

4th. That said defendant answering paragraph four (4), of the said bill of complaint, emphatically denies that said complainant saw him and asked him what he would charge to permit complainant to have said real estate transferred to complainant's daughter, Hattie McIntosh, through complainant's name; that defendant denies that there was anything said to him by said complainant in regard to buying the real estate mentioned in said bill of complaint,

in the manner alleged and set-forth in paragraph four of the said bill. The defendant further answering, avers that during the month of May, A. D., 1902, said complainant came to see him and wanted to sell to him the property set-forth in said bill of complaint, and after talking to said defendant for several hours, he, said defendant refused to buy said property upon the terms or in the manner that complainant wanted him to buy; that said complainant did on divers times and occasions, between the months of May and July, A. D. 1902, called to see defendant
7 and tried to get said defendant to buy said property, but said defendant absolutely refused to purchase the same; that during all of these calls, by said complainant, as aforesaid, said complainant never at any time, said, suggested or even hinted to said defendant that he wanted him, said defendant, to take, buy, or purchase said real estate as trustee for complainant's said daughter, nor anyone else; that once or twice during said complainant's calls to see said defendant about the purchasing of said real estate, said complainant suggested to him, the said defendant, that he would like for said defendant to have the said property conveyed to said defendant and let said real estate remain in said defendant's name, and that said complainant receive the rents and profits from the same, but said defendant absolutely refused to do this and would not have any dealings of any kind with said complainant in regard to the buying of the said real estate because, he, said defendant, was afraid to deal with the said complainant and finally told said complainant that he would not consent nor would he agree to do any business with him in relation to the purchasing of said real estate.

The said defendant was lead to believe that said complainant was anxious to have him purchase said real estate in order that complainant would receive from the parties who had said real estate, for sale, a commission for a sale of the same, but as soon as the said complainant made a proposition to said defendant to have said real estate conveyed to him, and that the rents and profits derived from the said property be turned over to said complainant, then said defendant refused to sign or execute any agreement with said
8 complainant and further averring, the defendant says that he would not have any more talk with him about this matter, and said complainant ceased visiting him and ceased trying to persuade him to purchase said property.

That in a short time thereafter, Mr. Steven M. Taylor called to see said defendant, and informed him that the complainant herein had told him, the said Taylor, that said defendant was the owner of said property; that said defendant informed said Taylor that he was not the owner of said property and had nothing to do with it, but that said complainant, had been tormenting him about buying the said property, and after talking to the said Taylor for awhile, he, said Taylor, promised and agreed to raise the necessary amount of money to purchase the said real estate, and the said defendant agreed to buy the same; that the said Taylor negotiated for the sale

of said property; that said defendant transacted all of his business in relation to the purchasing of said property through the said Taylor; that the agreement between said defendant and the said Taylor, was, that the said property be conveyed to said defendant in fee simple, and that the balance of the purchase money be paid by negotiating two loans upon said property, and that the said two loans be paid back by the rents and profits derived from said property; that the complainant herein knew nothing whatever of this agreement and had nothing at all to do with it; that the said agreement between said defendant and the said Taylor, was carried out and the said Taylor received his commission for making a sale of said property to said defendant.

9 5th. That said defendant answering paragraph five (5), of said bill of complaint, the defendant positively denies that the said complainant through his agent, arranged to negotiate two loans on said real estate; that complainant never did himself nor through any agent of his, negotiate and secure or cause to be secured, any loan of any money of any kind upon the said real estate. That a commission of seventy-five dollars, ($75), was paid to Mr. Steven M. Taylor for securing two loans upon the said property, and this commission was deducted out of the amount of money loaned.

It is true that there was about forty dollars needed to complete the sale, record the deeds and other necessary expenses, but defendant paid this money himself and never loaned any money to said complainant for anything whatever; that before the deal was closed, it was necessary for the defendant to go to Atlantic City, N. J. and obtain the signature of said defendant's wife to two deeds of trust upon said property, and defendant was without money with which to go, and asked the said complainant to loan him some money, this complainant refused to do, stating at the time in the presence of Steven M. Taylor, that he had nothing to do with this matter (meaning, the purchasing of said real estate), and he was not interested in it, all of which said defendant stands willing, ready and anxious to offer strict proof.

6th. The defendant answering paragraph six, (6), of the bill of complaint, denies that said complainant offered to pay him ten dollars upon an alleged agreement, and to pay the said complainant the sum of forty dollars with interest, together with his other expenses, incurred by said defendant in the purchase of the

10 property mentioned in the bill of complaint, and the defendant denies all other matters and things alleged in paragraph six, (6), in the bill of complaint. The defendant further answering, avers that several months after the said real estate had been purchased by him and after the complainant found that he was getting along very well in paying back the money borrowed, said complainant called to see him and tried to get him to sell him, his equitable interest in said property, but this the defendant refused to do, and on several different occasions since the buying of said

of said property; that said defendant transacted all of his business in relation to the purchasing of said property through the said Taylor; that the agreement between said defendant and the said Taylor, was, that the said property be conveyed to said defendant in fee simple, and that the balance of the purchase money be paid by negotiating two loans upon said property, and that the said two loans be paid back by the rents and profits derived from said property; that the complainant herein knew nothing whatever of this agreement and had nothing at all to do with it; that the said agreement between said defendant and the said Taylor, was carried out and the said Taylor received his commission for making a sale of said property to said defendant.

9 5th. That said defendant answering paragraph five (5), of said bill of complaint, the defendant positively denies that the said complainant through his agent, arranged to negotiate two loans on said real estate; that complainant never did himself nor through any agent of his, negotiate and secure or cause to be secured, any loan of any money of any kind upon the said real estate. That a commission of seventy-five dollars, ($75), was paid to Mr. Steven M. Taylor for securing two loans upon the said property, and this commission was deducted out of the amount of money loaned.

It is true that there was about forty dollars needed to complete the sale, record the deeds and other necessary expenses, but defendant paid this money himself and never loaned any money to said complainant for anything whatever; that before the deal was closed, it was necessary for the defendant to go to Atlantic City, N. J. and obtain the signature of said defendant's wife to two deeds of trust upon said property, and defendant was without money with which to go, and asked the said complainant to loan him some money, this complainant refused to do, stating at the time in the presence of Steven M. Taylor, that he had nothing to do with this matter (meaning, the purchasing of said real estate), and he was not interested in it, all of which said defendant stands willing, ready and anxious to offer strict proof.

6th. The defendant answering paragraph six, (6), of the bill of complaint, denies that said complainant offered to pay him ten dollars upon an alleged agreement, and to pay the said complainant the sum of forty dollars with interest, together with his other expenses, incurred by said defendant in the purchase of the

10 property mentioned in the bill of complaint, and the defendant denies all other matters and things alleged in paragraph six, (6), in the bill of complaint. The defendant further answering, avers that several months after the said real estate had been purchased by him and after the complainant found that he was getting along very well in paying back the money borrowed, said complainant called to see him and tried to get him to sell him, his equitable interest in said property, but this the defendant refused to do, and on several different occasions since the buying of said

property by said defendant, he said defendant, has been approached by the said complainant and offered in words alone, divers sums of money in order to induce and persuade said defendant to convey to said complainant, the equitable title in the said real estate, but the defendant refused so to do.

7th. Defendant answering paragraph seven (7), of said bill of complaint, the defendant denies that said real estate rents for forty dollars per month; the said defendant avers that the rents and profits amounts to about thirty-seven dollars per month and some months the rents and profits falls to about twenty-seven dollars per month; the defendant averring further, admits that the rents and profits from the said real estate *was* collected and applied to the payment of a note of three hundred dollars with interest thereon, secured by a second deed of trust and taxes, and that the rest has been applied to the payment of interest on a note of twenty-five hundred dollars, secured by the first deed of trust, and for repairs to said real estate.

11 The said defendant denies that since July, 1903, to the filing of the bill of complaint herein, that rents and profits from the said real estate have been collected by said defendant or anyone else, and unjustly and fraudulently appropriated to defendant's own use. The defendant avers that the said property owes him now about three hundred dollars besides his time and what he himself has done in keeping the said real estate in rentable condition. And that he will have to meet the interest as it becomes due, pay the taxes and keep the repairs up on said premises before he can repay himself out of the rents and profits of said real estate for money he has invested in the same.

Having fully answered all of the matters and things set forth and alleged in the bill of complaint filed herein, as defendant is advised is material for him to answer, he therefore prays that the said bill of complaint be dismissed and that he be allowed his proper costs for making his defense hereto.

JAMES W. GREEN, *Defendant.*

M. T. CLINKSCALES,
Counsel for Defendant.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, James W. Green, do solemnly swear that I have read the foregoing and annexed answer by me subscribed, and know the
12 contents therein, that the facts therein alleged upon my personal knowledge, are true, and the facts alleged upon information and belief, I believe to be true.

JAMES W. GREEN.

Subscribed and sworn to before me this 2nd day of November, A. D. 1903.

[SEAL.]

SAMUEL E. LACY,
Notary Public, D. C.

Replication.

Filed November 5, 1903.

In the Supreme Court of the District of Columbia.

ALBERT McINTOSH
vs.
JAMES W. GREEN. } Equity. No. 24258.

The complainant hereby joins issue on the answer of the defendant filed herein.

JOSEPH H. STEWART,
Sol. for Complainant.

13 *Testimony for Court of Appeals, etc.*

Filed Jan. 3, 1905.

In the Supreme Court of the District of Columbia.

ALBERT McINTOSH, Complainant,
vs.
JAMES W. GREEN, Defendant. } Equity. No. 24258, Docket 54.

It is this 15th day of December, 1904 stipulated and agreed by and between Joseph H. Stewart, solicitor for complainant, and Marion T. Clinkscales, solicitor for the defendant, that the within abstract of the testimony taken before James F. Bundy, examiner, in the above entitled cause embraces the merits of complainant's proof in support of his bill and defendant's proof thereto in defense thereof.

JOSEPH H. STEWART,
Solicitor for Complainant.
MARION T. CLINKSCALES,
Solicitor for Defendant.

14 In the Supreme Court of the District of Columbia.

ALBERT McINTOSH, Complainant,
vs.
JAMES W. GREEN, Defendant. } Equity. No. 24258, Docket 54.

Direct examination by Mr. STEWART:

ALBERT McINTOSH, the complainant, testified as follows:

I live in Washington, D. C. About May or June 1902 I decided to purchase lot 41 in Wright and Cox's subdivision and engaged

Mr. James H. Meriweather to secure a loan sufficient to buy this property. I had decided to put the title to the property in the name of my daughter, Hattie McIntosh, but Mr. Meriweather suggested that he thought it would be best to put it in the name of some good man as the parties might be unwilling to make a loan to a woman. I had known the defendant for a number of years and offered him ten dollars for the use of his name in the transfer of the title to my daughter at a time when I was ready for him to do so. Defendant consented to this proposition. Afterwards, I offered to pay defendant ten dollars for the use of his name and requested him to transfer the title to my daughter. The money to pay for the property was secured through Mr. James H. Meriweather for me, there were two deeds of trust; one for $2500.00 and the other for $300.00; it required about $40.00 to pay all expenses incident to the transfer. I requested defendant to furnish that amount which I promised to pay him upon the transfer
15 of the property to my daughter. I offered to pay defendant $40.00 with interest and also to pay for his trip to Atlantic City, N. J., but he absolutely declined to deed the property over or even talk with me about the matter. Mr. James H. Meriweather employed Mr. Stephen M. Taylor to negotiate the two loans, the $2500.00 was secured from Mr. Cumings and the $300.00 from Mr. T. E. Stubblefield. Defendant paid no money at the outset, but did advance $40.00 as a loan to make up the shortage at the close and I promised to reimburse him. The $40.00 was paid to the Columbia Title Company and the said company closed out the matter. I have requested defendant to transfer the property more than a dozen times, but he positively refused to do so. Defendant collects the rent from the property, but during the first year Mr. Saul at Seventh and L streets, N. W., collected the rents and the rents were applied to paying Mr. Stubblefield on his $300.00 loan and also to paying the interest on the $2500.00 loan. I do not know how the rents are applied now; so far as I know defendant applies the rents to his own use. Mr. Stubblefield has been paid in full.

Cross-examination of complainant by Mr. CLINKSCALES:

I was to pay $2600.00 for the property. I arranged to pay that through Mr. Meriweather to the Union savings bank. Today is the first time that I heard that the Union savings bank received $2289.00 for the property. I had an agreement only through my agent. I did not call on the Union savings bank, I left the matter entirely with my agent who is a real estate broker. Defendant readily consented to take the property in his name for
16 the sum of $10.00. I saw defendant about it a number of times and he was perfectly willing to serve. The reason I saw him a number of times is because I used to go to his shop to get shaved. I gave him no permission to take charge of the property as I expected to have it transferred in a very short time. I never

told defendant that he would receive $10.00 if he took the title in his name and $2.00 per month as long as the title remained in his name. I have nothing in writing to show that defendant was to take the property as trustee for me. I had implicit confidence in defendant and expected him to hold it for a short time. Defendant consented to take the title at the first conversation I had with him. Defendant never refused to have anything to do with me and the property he was anxious to have the deal go through so he could get the $10.00. I have had some experience in buying and selling real estate and knew that the transaction should be reduced to writing and signed by the parties making the agreement, but I thought I could trust defendant for the short time he was to hold the title. I had a couple of judgements against me and did not desire the title in my name because I knew it would tie it up. There was no desire to defeat creditors, as I have no creditors who are pressing me, they are perfectly willing to give me a show. I did not have the title put in my daughter's name because my agent advised that it would be better to have it put in the name of a man as he thought he could secure the loans easier. I learned that Mr. Meriweather got $2500.00 from Mr. Cummings and $300.00 from Mr. Stubblefield. Mr. Stubblefield told me himself that he made a loan through Mr. Taylor. I never had any connection with Mr. Cummings as my agent looked — that en-
17 tirely. I did not spend any money in the purchase of this property. I would have spent some money and redeemed the property out of the hands of the party, had it not been that he refused to take the money as agreed upon. There was no stated sum decided upon for the payment of my agent. The understanding was that he would be amply paid if he got the deal through and he did get it through. I have been waiting to get possession of the property so I could make arrangements to pay him. I borrowed the sum of $40.00 from the defendant either in the latter part of June or in the early part of July. We met down at the title company's and I was told by Mr. Taylor whom Mr. Meriweather employed that there was $40.00 short of the amount to make the deal. Mr. Green was present and I asked him if he would not loan the amount to consummate the deal. Mr. Taylor, myself and Mr. Green were present on the steps of the company's building, I had previously arranged to meet them there on that morning and Mr. Taylor heard the conversation. On the day that I was at the title company's the defendant agreed to furnish the amount of $40.00 and said that he would be down to the title company's next morning, the next morning I was not there. My recollection is that between two or three months after the deal, I offered to settle in full with defendant. I told defendant that I was ready to settle. He said "Al- right you can come up here in the next few days." I did call to see him in a few days after that, but he refused to settle; I did tender him;—I told him I was ready to settle at any time. I offered to give the defend-

ant $400.00 which would include the amount that I owed him
18 all told and would have given him $150.00 cash for his services. I tendered the defendant $400.00 cash to reconvey this property to my daughter, had made all the arrangements and only waited on him to settle the matter, which he partially agreed to and then backed out.

JAMES H. MERIWEATHER testified on behalf of the complainant as follows:

I live in this city. I am in the real estate business. I am acquainted with the complainant and slightly acquainted with the defendant—I had some business in hand for Mr. McIntosh about the month of June, 1902 as agent to sell lot 41 in Wright and Cox's subdivision. I sold the property to Albert McIntosh with the understanding by McIntosh to me that Green would take title for McIntosh. At this time I had never met Green, but was subsequently introduced to him by Mr. McIntosh at the corner of 14th and F streets, N. W. The Union savings bank was the owner of the property and it sold for $2600.00. The original price of the property was $2800.00 and I sold it for $2600.00 all cash. I was paid a commission by Mr. J. B. Sleaman, Jr., of the Union savings bank. Mr. Stephen Taylor negotiated the loans; the first loan was made by H. S. Cummings in the amount of $2500.00, the second trust was placed by Mr. Stubblefield in the amount of $300.00. I had nothing to do with the loans beyond placing them in the hands of Mr. Taylor to negotiate. Mr. Taylor negotiated the two loans at my request. He knew nothing about the property until I informed him. I think I talked with defendant for a moment or two going up in the car one afternoon after the transaction was closed. It was only a general conversation with respect to this property. My dealing
was entirely with McIntosh, as I understood that McIntosh was
19 buying the property and that Green was simply carrying the title. In my first conversation with Mr. Green on the corner of 14th and F streets, N. W. I am sure that Mr. Green understood that he was to carry the title for McIntosh that in my subsequent conversation with him he did not appear satisfied with the position, but rather regarded himself as the owner of the property.

Cross-examination by Mr. CLINKSCALES:

Mr. McIntosh is a builder and frequently deals in real estate. I have sold property for the Union savings bank on previous occasions and when this property was suggested, I called at the bank to ascertain price and terms of this property and subsequently undertook the sale of it to Mr. McIntosh with the consent of the bank. The bank received a check from the title company for full price of property amounting to $2600.00 less I think taxes amounting to $50.00. Mr. John B. Sleaman, Jr., treasurer of the Union savings bank paid me my commission. I was agent for the bank in selling

the property. I was acting for both parties. I was not to receive a penny of commission from McIntosh. I was not promised anything neither did I receive anything from McIntosh. There was no written agreement between complainant and defendant that I know of. I did understand, however, distinctly that Mr. McIntosh was the real owner of the property and that Mr. Green for a consideration from Mr. McIntosh was to carry the title for him. The reason for my being introduced to Mr. Green at the corner of 14th and F streets, N. W. was in order that it might be explained to me that Mr. Green would carry the title for McIntosh. I do not know where
20 the defendant made his agreement with McIntosh. All I know, at the meeting at the corner of 14th and F streets, N. W., McIntosh told me in the presence of defendant that he (Green) would carry the property for him and to this statement defendant assented. I was not his adviser. Mr. Stephen M. Taylor the agent negotiated the loans on my application to him. I don't know that McIntosh spent any money in buying this property except that which he borrowed.

Re-direct examination by Mr. STEWART:

Exhibit J. H. No. 1 is a statement from the Columbia Title Company transmitting a check for the purchase of the property known as lot 41 in Wright and Cox's subdivision, the same property I sold for the Union savings bank.

(Papers now offered in evidence by Mr. Stewart and by the examiner marked Complainant's Exhibit No. 1.)
(This exhibit was objected to by Mr. Clinkscales.)

STEPHEN M. TAYLOR testified on behalf of the defendant as follows:

My business is mining and engineering. I know the defendant J. W. Green and Albert McIntosh. I had business with Mr. Green in connection with procuring a loan on his house at 2214 9th St., N. W. I negotiated a first mortgage through Mr. H. S. Cummings of the Kellogg building; a second mortgage of $300.00 through Mr. Stubblefield. The whole transaction was consummated and concluded through the Columbia Title Company. The defendant employed me to negotiate the loans about the 1st of July when they were placed upon the property in question.
21 I was not employed by Mr. Meriweather or by any one except defendant. My first knowledge of this property and the fact that defendant wished a loan was through Mr. J. H. Meriweather who requested me to call on defendant. I asked Mr. Meriweather to whom I was to look for my pay for services. He told me to look to defendant for instructions and pay as the defendant was the owner of the property and that he (Meriweather) did not look to me for any portion of this pay. I did not know defendant before this.

conversation. I went to defendant's barber shop on V street and met him at his place of business about the end of May or the 1st of June, 1902. I only knew Mr. Green as owner in connection with this loan. I did not mention Mr. McIntosh's name in connection with the transaction. I naturally mentioned Meriweather, he having told me that defendant wished the loans, who was the owner of the aforementioned property. Meriweather stated that Green was the owner, the fact being that the ownership made the issue as to whether I could get the loans or not. McIntosh did not, during the time I was negotiating these loans, say anything to me about defendant holding this property as trustee for him (McIntosh) or his daughter Hattie. On closing the loans defendant needed as well as I can remember, $20.00 to pay his expenses to Atlantic City to get his wife's signature necessary to the deeds. I met Green and Mr. McIntosh at the Columbia Title Company's office. He (McIntosh) stated that he was not interested in the place and declined to do so. I afterwards under suggestion of Meriweather, gave Green $10.00 toward this amount, Meriweather undertaking to give Green another $10.00.

22 As to buying the property, I was ignorant. I only knew and thought that I was making loans to defendant for his own purpose. The money given by me to Green was necessary for his expenses to go to Atlantic City and secure the signature of his wife to the trust. The loans were entirely negotiated by me and the money paid through the Columbia Title Company. As far as was stated to me at the time by the Columbia Title Company, there was money enough to close the transaction. I never heard of McIntosh's claim until Mr. Green's attorney requested me to be present at McIntosh's deposition in this case. I met Meriweather on F street after hearing of the claim of McIntosh and told him if they had a case or claimed anything that both he and McIntosh had made a misstatement to me in regard to Green being the owner of the property, which statement led the parties to put their money on this property.

Cross-examination by Mr. STEWART:

I have known Mr. Green since May, 1902. He is the only party and the first party, that gave me instruction in regard to these loans. I saw Green and McIntosh talking at the title company. I did not overhear their conversation. I stopped with them for about one minute. How long they remained together before or after I do not know. I do not know why McIntosh said he had no connection with the property. I did not see that his answer was relevant to my question. It is true that Meriweather told me that Green wished the loans, but he was not remunerated by me or

23 through me or expected any of me. What his interests and objects were I do not know. When I went to Mr. Green he only said that he wished to borrow the money on the aforemen-

tioned property in his name the legality of the title was to be left to the Columbia Title Company.

Direct examination of Mr. GREEN by CLINKSCALES:

I am the defendant and reside in this city. I am the owner of the property mentioned in the bill filed in this cause. The title passed to me between the 1st and 7th of July, 1902. I paid cash for the property. I got Mr. S. M. Taylor to secure the money for me. All the money has not been paid back. I put two trusts on the property. I have paid the 2nd trust note off entirely and the interest notes as they came due. The second trust was $300.00 that has been paid with interest and released, I have not paid the notes secured by the first deed of trust, I have paid the interest on the notes. The interest on the notes is $150.00 per year. My personal money paid the note together with the interest secured by the second trust and the interest on the first deed of trust. The property is rented for $37.50. The second trust was taken up with a portion of the rent, repairs and etc. I raised the interest money from another source and the rent from the property was turned over to the party who held the second trust. I never had the handling of that money. I had not at any time, before the deed transferring this property to me any agreement with Albert McIntosh in regard to the sale thereof. I had some talk with McIntosh in regard to buying this property, at my barber-shop.

24 In the month of May, 1902, Mr. McIntosh called on me, and told me about the sale of this property and said that he would give me $10.00 if I would take this property in my name. He also agreed to make me the agent to collect the rents, for which he would give me $2.00 per month. From the rents I was to deposit in the bank $12.50 with which to pay the interest on $2500.00. I was to have money to pay water rent, taxes, and improvements, and the balance was to be turned over to him. I asked him what he was going to do with the balance of the money; he said he was going to live off of it. I asked him when would he pay the $2500.00 then? He says, "I will never pay that, when the time expires I'll continue to renew the loan." I told him I would consider the matter, and let him know later on—that was his first call. On his second call, I had not decided as to what I would do, so the month of May expired. And the number of times—possibly a dozen or more times, (for he was there as much as twice a day) he came, and I never decided during the month of June. I consulted my attorneys about the matter, and also another man. Later on, Mr. Taylor called on me and told me that Mr. Meriweather said that I wanted to secure a loan on a piece of property that I owned on 9th street and I told him that I did not own any property on 9th street, and could not see how Mr. Meriweather could tell such a lie or any-body-else. And then I became so frightened at that statement that I said I would have nothing more to do with the transaction, in no shape

or form. After that Mr. Taylor called on me several times, and told me he could secure loans; that I need not be afraid. Upon
25 those grounds, I accepted Mr. Taylor's terms and the deal went on; he started in to raise the money.

I did not hear that McIntosh wanted this property put in his daughter's name until that paper was served on me. I did not accept McIntosh's proposition in regard to buying this property. McIntosh introduced me to Mr. Meriweather as the buyer of the property at the corner of 14th and F Sts. It was about May or June, 1902 and Mr. Meriweather said: "It is a good investment, what business do you follow." I told him that I conducted a barber-shop at 1101 V street, N. W. Not one word was said to me by McIntosh in Meriweather's presence about having the title to this property put in my name and afterwards transferred to McIntosh. I did not agree with McIntosh to have the title transferred to him or his daughter, Hattie, and I never loaned McIntosh a dollar in my life and never borrowed any from him. McIntosh never tendered me the sum of $400.00, he never offered me any money, he has made several suggestions about money, but I have accepted none. I have not realized out of the rents enough money to repay myself for the money advanced by me in purchasing this property.

Cross examination of Mr. GREEN by Mr. STEWART:

I have been knowing Mr. McIntosh all my life since I was about 7 or 8 years old. I have had this property about 17 months. Mr. Saul stopped collecting the rents about April or May, 1903. I have collected the rents myself since April 1, 1903. I have had to pay for repairing leaky closets, stopping leaks in the roof, repairing porch and all necessary repairs that had to be made. I have
26 spent about $15 or $25 for repairs since I have had it. I have paid $38 for fire insurance from 1902 to 1905 out of my pocket. I paid it at the title company's office. I think on the 6th or 7th of July. I got Mr. Taylor to secure the money for me to purchase that property, and I was advised by Mr. Taylor and he transacted all the business for me. To the best of my knowledge, both checks were there before I had anything to do with it other than making arrangements with Mr. Taylor. The first interest of $90.00 came out of my pocket. I do not know whether I have been paid back in rents or not. Mr. Taylor secured two loans for me and they were turned over to the Union savings bank for the purchase of that property. I do not know anything about Mr. Taylor's business other than what I have explained, he received a commission from me. The $300.00 mentioned in my answer is made up of money, expenses and time. I cannot tell how much money without looking at my books. I cannot say how much of that $300.00 is charged for time. It might be true that the property was transferred to me without paying one penny cash; the costs to me were close to $75.00. I made a trip to Atlantic City, and I also put $38.00

in it. That trip to Atlantic City cost me between $15 and $20 paying an interest of $10 for the loan of $38, that $38 was for fire insurance and shortage on the account at the Columbia Title Company. I am sure the fire insurance was but $30 the other $8 was shortage, if my memory serves me well, Mr. Taylor gave me $10 after I returned from Atlantic City.

Re-direct examination by Mr. CLINKSCALES:

Mr. JAMES H. MERIWEATHER in rebuttal testified as follows:

27 I never gave Mr. Taylor any money for any purpose. I did pay out $12.50 for Mr. McIntosh in connection with this transaction. I paid the money to Mr. Sleman and my impression is that it went to Messrs. Ralston and Siddons for the preparation of papers.

Cross examination:

I have no receipt for the $12.50 paid out by me to Mr. Sleman.

28 COMPLAINANT'S EXHIBIT J. H. No. 1.

Filed February 6, 1904.

The Columbia Title Insurance Company, 500 Fifth Street N. W., Washington, D. C.

Wm. E. Edmonston, Pres't. John D. Coughlan, Secretary.

WASHINGTON, D. C., *July* 1*st*, 1902.

The Columbia Title Insurance Company to the Union Savings Bank, Dr.

In re Sale Lot 41″, Wright and Cox's Subdivision.

Price of property.....		2600.00
Taxes, water main.....	$12.57	
" sale 1901 water main.....	14.13	
" sale 1902 water main.....	14.41	
		41.11
Check for balance.....		2558.89
	2600.00	2600.00

W. L. MILLER, *Ass't Sec'y.*

11/23/03.

29 *Opinion of the Court.*

Filed October 25, 1904.

In the Supreme Court of the District of Columbia.

ALBERT MCINTOSH, Plaintiff,
vs.
JAMES W. GREEN, Defendant. } No. 24258. In Equity.

The bill sets out substantially the following state of facts. In June, 1902, plaintiff, by his agent, bought certain real estate in this city of the Union savings bank for $2600; he then made an agreement with defendant whereby the latter, in consideration of $10.00 was to take the title and subsequently convey it to plaintiff's daughter. The reason for this is stated in the bill as follows: "Complainant explained to defendant at the time that he was known as an agent by the Union Savings Bank people and desired to have the conveyance by the Union savings bank first made to a different party and then by the said party to complainant's daughter as aforesaid." The bill further states that, through his agent, plaintiff borrowed on the property $2500. as a first loan, and $300. as a second loan, and that when it came to a final settlement, after paying expenses, commissions etc., there was still a balance of $40. due, which he borrowed of defendant. The deed was made to defendant—no trust being disclosed therein—and plaintiff avers that although he has offered to pay him the ten dollars and the forty dollars, with interest,
30 and other expenses, defendant refuses to convey to plaintiff's daughter. He prays for a decree directing defendant to execute a deed to plaintiff's daughter, and for an accounting.

The answer of defendant denies, in toto, the statement that he took title to the property for the purpose of reconveying it to plaintiff's daughter, but avers that he bought it, through one Taylor, his agent, on his own account, and that plaintiff has no interest therein, legal or equitable.

In addition to the matters averred in the bill, plaintiff's proofs show that the alleged agreement was oral; that the reason plaintiff did not take title in his own name was that he "had a couple of judgments against him" (p. 12). Plaintiff also swears that he spent no money for the purchase of the property (p. 14). The defendant testifying in his own behalf, denied that he made the agreement alleged by the plaintiff, but claimed that the purchase was for himself. He explicitly denied that the $40. was loaned by him to the plaintiff. He admitted that plaintiff did make the proposition to him that he, defendant, take title to the property but says he declined so to do, and that his subsequent purchase was on his own account.

Without passing upon the question of fact involved in this testimony, or considering whether the testimony preponderates in plaintiff's favor, or not, I am of the opinion that plaintiff's bill must be dismissed. His case is obviously bottomed upon the theory of a resulting trust, which arises when the purchaser of an estate pays the purchase money, and takes title in the name of a third person. But do the facts alleged by plaintiff (conceding that they are sufficiently established to overcome "the strong presumption
31 arising from the terms of a written instrument") bring his case within this rule? Says Bigelow: (Fraud, vol. 1, p. 453) "This rule indeed is generally considered, in this country, as resting upon the very ground that the person claiming the existence of the trust has paid his money for the land; so that if it appears that he has paid out nothing, he cannot claim the property. Any fraud, however, actual or constructive, would doubtless suffice. But is is considered not to be enough to take a case out of the operation of the statute that the person who has bought the estate has merely broken his verbal promise, in refusing to carry out the understanding with the one who employed him to buy."

In this case, plaintiff himself testified that he did not contribute a cent towards the payment of the real estate; he certainly assumed no liability on the incumbrances which practically paid for it; and he fails to sustain the burden of proof to establish the necessary proposition that the $40.00 balance paid by the defendant was a loan to him. In argument, his counsel contended that his discovery of the bargain whereby the purchaser could become the owner of the real estate by the use of money borrowed from others was such a contribution; in other words, that his "information" through which the property was obtained, was such a valuable contribution towards the purchase price that he is entitled to credit therefor. But this view entirely mistakes the theory of a resulting trust. The purchase price goes to the vendor, not to the vendee of the legal title. As between one attempting to set up the resulting trust and
32 his alleged trustee, the "information" furnished by the former to the latter in regard to the property might be a sufficient consideration to support a contract *between them*, provided such contract was in the form required by law when an interest in real estate is involved. But such "information" is no part of the consideration of the deed from the original grantor, the payment of which by the *cestui que trust* is the basis of a resulting trust.

It seems to me the facts in this case bring it rather within the rule laid down by the Supreme Court in Howland *vs.* Blake, 7 Otto 624, 24 Co-op. 1027: "Such an agreement is one creating by parol a trust or interest in lands, which cannot be sustained under the statute of frauds. It is a naked promise by one to buy lands in his own name, pay for them with his own money and hold them for the benefit of another. It cannot be enforced in equity, and is void." This is precisely what plaintiff alleges defendant did,—agreed to purchase the land and convey it to plaintiff's daughter. To quote Perry,

(Trusts vol. 1, 4th ed. sect. 134), "A trust results from the acts, and not from the agreements, of the parties, or rather from the acts accompanied by the agreements; but no trust can be set up by mere parol agreements, or, as has been said, no trust results merely from the breach of a parol contract; as, if one agrees to purchase land and give another an interest in it, and he purchases and pays his own money, and takes title in his own name, no trust can result. *And so if a party makes no payment, and none is made on his account, either actually or constructively, he cannot claim a resulting trust.*"

33 As was said by the Court of Appeals in McCartney *vs.* Fletcher, 11 App. D. C., at p. 20, "Express trusts of real estate cannot be proved by parol; they must be, by the terms of the statute, manifested or proved by some writing, signed by the party to be charged with the trust. * * * And the mere refusal of a supposed trustee to execute a parol trust, or the denial of its existence, is not such a fraud as will take the case out of the statute of frauds, and authorize a court of equity to enforce the trust."

For these reasons, I will sign a decree dismissing the bill, with costs.

ASHLEY M. GOULD, *Justice.*

34 *Decree.*

Filed October 26, 1904.

In the Supreme Court of the District of Columbia.

ALBERT MCINTOSH, Plaintiff,
vs.
JAMES W. GREEN, Defendant. } No. 24258. In Equity.

This cause coming on for a final hearing at the April (1904) term of this court, upon the bill, answer and depositions, and the same having been argued by counsel for the respective parties hereto, and upon due consideration by the court, it is this 26th day of October, A. D. 1904, adjudged, ordered and decreed, that said bill of complaint, be, and the same hereby is dismissed with costs.

By the court,

ASHLEY M. GOULD, *Justice.*

From which decree plaintiff prays an appeal to the Court of Appeals in open court which is allowed and appeal bond fixed at $50.00.

ASHLEY M. GOULD, *Justice.*

35 *Memorandum.*

November 7, 1904.—Appeal bond filed.

Directions to Clerk to Prepare Transcript.

Filed December 15, 1904.

In the Supreme Court of the District of Columbia.

ALBERT McINTOSH, Complainant, vs. JAMES W. GREEN, Defendant. } Equity. No. 24258, Docket No. 54.

To J. R. Young, Esq., clerk of the supreme court, District of Columbia.

SIR: Please prepare transcript of the record in the above entitled cause for the Court of Appeals as follows:

Oct. 22, 1903. Bill filed.
Nov. 3, 1903. Appearance of def't by M. T. Clinkscales on answer—filed.
" 5, 1903. Replication filed.
Feb. 6, 1904. Depositions behalf complainant, indicated below.
" 6, 1904. Depositions behalf defendant, indicated below.
" 20, 1904. Calendared for Mar. 1904 term.
Oct. 25, 1904. Opinion of Mr. Justice Gould filed
" 26, 1904. Decree dismissing bill with costs and appeal from allowed in open court, and penalty of appeal bond fixed at $50.00.
36
Nov. 7, 1904. Appeal bond for $50.00 filed.
Dec. —, 1904. Testimony as stipulated and agreed by and between the solicitors.

JOSEPH H. STEWART,
Solicitor for Complainant.

Acknowledge service of copy—Dec. 15, 1904.

M. T. CLINKSCALES,
Counsel for Defendant.

Order Extending Time to File Record.

Filed December 16, 1904.

In the Supreme Court of the District of Columbia.

ALBERT McINTOSH, Complainant, vs. JAMES W. GREEN, Defendant. } Equity. No. 24258, Docket 50.

Upon motion of complainant by his solicitor herein it is this 16th day of December, 1904 by the court ordered that the time for filing the transcript of record of this case in the Court of Appeals be and the same is hereby extended until the 25th day of January, 1905.

THOS. H. ANDERSON, *Justice.*

37 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 36, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 24,258, equity, wherein Albert McIntosh is complainant, and James W. Green is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 24th day of January, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1511. Albert McIntosh, appellant, *vs.* James W. Green. Court of Appeals, District of Columbia. Filed Jan. 25, 1905. Henry W. Hodges, clerk.

In the Court of Appeals of the District of Columbia.

JANUARY TERM, 1905.

No. 1511.

ALBERT McINTOSH,
Appellant

vs.

JAMES W. GREEN,
Appellee.

BRIEF ON BEHALF OF APPELLEE.

MARION T. CLINKSCALES,
Attorney for Appellee.

MILANS, LAW PRINTER, 615 E STREET N. W., WASHINGTON, D. C.

In the Court of Appeals of the District of Columbia.

JANUARY TERM, 1905.

ALBERT MCINTOSH,
Appellant
vs.
JAMES W. GREEN,
Appellee.
No. 1511.

BRIEF ON BEHALF OF APPELLEE.

Statement of Case.

This is an appeal from a decree of the Supreme Court of the District of Columbia, dismissing the bill of complaint filed by appellant, Albert McIntosh, (complainant) in a suit brought by appellant against the appellee, James W. Green (defendant), asking the Court to decree specific performance of an alleged contract to purchase certain real estate in the District of Columbia, or to establish a resulting trust in certain real estate in said District in favor of appellant, and praying the Court to "pass a decree commanding and directing the defendant to execute a deed in fee-simple of the real estate to complainant's daughter, Hattie McIntosh," and "That the defendant

be required by the decree of the Court to render an account of all the rents and profiits derived from said real estate," etc. (Rec., p. 3.)

There is alleged in the bill of complaint a parol contract between appellant and appellee in substance as follows :

That said appellant desired " to purchase lot forty-one (41) in Wright and Cox's subdivision of part of Pleasant Plains as per plat recorded in Liber No. 2 at folio 24 and 25 of the records of the surveyor's office of the District of Columbia, at and for the cash sum of twenty-six hundred ($2600.00) dollars." (Rec., p. 1 and 2.) And that appellant saw appellee and asked him " what he would charge to permit complainant to have said real estate transferred to complainant's daughter, Hattie McIntosh, through defendant's name," and complainant explained to the defendant why he wanted this done and the " defendant agreed to accept ten dollars ($10.00) to be paid to the defendant within a reasonable time after the completion of the details of said purchase as the full payment for allowing the title to said real estate to pass through his name to complainant's daughter." (Rec., p. 2.)

Appellant arranged through his agent to purchase said real estate and when the title was ready to pass from the owners to appellee, there was a shortage of forty dollars ($40.00) and appellant requested appellee to loan him the amount necessary to close the deal and that he would repay appellee when the transfer was made as agreed upon. (Rec., p. 2.).

The appellee, James W. Green,(Defendant) in his answer to the bill of complaint emphatically denies that he agreed to take the title to the property in question in his name for the sum of ten dollars ($10.00) or any other amount and

then transfer the property to appellant's daughter at some future time. Appellee in his answer admitted that appellant did make a proposition to him about buying the property, but he declined to accept the proposition. Appellee purchased the said real estate for himself through one Steven M. Taylor and paid the said Taylor his commission for negotiating two loans to pay the balance of the purchase money. "There was about forty dollars needed to complete the sale, record the deeds and other necessary expenses, but defendant paid this money himself and never loaned any money to said complainant for anything whatever." (Rec., p. 5 and 6).

ARGUMENT.

First. A parol contract to purchase real estate falls within the statute of frauds, and equity will not grant relief.

The bill of complaint does not say whether or not the alleged agreement was in writing, but the appellant in his testimony says:

> "I have had some experience in buying and selling real estate and knew the transaction should be reduced to writing and signed by the parties making the agreement, but I thought I could trust defendant for the short time he was to hold the title." (Rec., p. 10.)

From the appellant's own admission the alleged agreement to purchase the real estate mentioned in his bill of complaint, was an oral agreement and falls within the *Statute of Frauds.*

Section 1118 of the Code of the District of Columbia, provides as follows:

> "*Declaration of Trust.* All declaration or creation of trust or confidence of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust or by his last will in writing, or else they shall be utterly void and of none effect."
>
> "All grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same or by such last will or devise, or else shall likewise be utterly void and of none effect." (Section 1118, D. C. Code.)

The appellee emphatically denies that he agreed to permit the title to the real estate to be put in his name and then transfer the same to appellant's daughter, but granting that he did agree orally as alleged by the appellant, said appellee under the law would not be holding as trustee. Section 2, on p. 1188, of Vol. 15, Am. Inc. of Law says that:

> "*Oral agreement for interests in land to be purchased.* A person who orally agrees to purchase land in his own name with his own money and reconvey it to another person, or give an interest therein to him, neither party having any present interest in the land to be purchased, cannot be held as a constructive trustee on his refusal to perform such agreement."

In the case of Roberts *vs.* Kimball, the Court in delivering its opinion upon this same subject, said:

> "One who buys land and takes deed to himself is not bound by parol agreement to let another have an interest in the land upon payment of a

> portion of the expenses incurred in acquiring title nor by parol agreement to purchase for himself and the other jointly."
> Roberts *vs.* Kimball, 55 Ark., 414.

In the case of Bland *vs.* Talley, a bill in equity was filed to establish a resulting trust in favor of complainant. The complainant proved that he and W. and J. entered into a parol agreement to purchase the land on credit and to pay for it out of their joint labor and that the three would own it when paid for, in equal shares, that W. purchased the land in his own name, arranged to pay all the money and took the title to himself. The Court held :

> "That the agreement was void by the Statute of Frauds and there was no trust in favor of plaintiff and J."
> Bland *vs.* Talley, 50 Ark., 71.

For further authorities upon this point, I respectfully submit the following cases :

> Rogers *vs.* Simmons, 55 Ill., 76.
> Campbell *vs.* Powers, 37 Ill., App., 308.
> 17 (Wall.), U. S., 44.
> 63 Am. Dec., 420.

In the case of Dorsey *vs.* Clark, 4 Har. & J. (Md.) 551, it was said in that case :

> "Evidence that A. told B. that he had bought to benefit C., and if C. would pay him the purchase money with interest, he would convey the land to C., is not sufficient to set up a trust in C's. favor."

The record in this case shows that the appellee, James W. Green, never did accept the proposition made to him

by Albert McIntosh, the appellant. James H. Meriweather, the alleged agent of Albert McIntosh and who was introduced as a witness on behalf of the appellant in this cause stated that:

> "In my first conversation with Mr. Green on the corner of Fourteenth and F Streets, N. W., I am sure that Mr. Green understood that he was to carry the title for McIntosh, that in my subsequent conversation with him he did not appear satisfied with the position, but rather regarded himself as the owner of the property." (Rec. p. 11.)

It is contended that the appellant did want to have the property put in the name of the appellee, but appellee refused to have anything to do with him. James W. Green, the appellee, in his testimony denied that he in the presence of James H. Meriweather admitted that he was to take or permit the title to the property in question to be put in his name and afterwards transfer the same to McIntosh, but says upon this point that:—

> "I did not hear that McIntosh wanted this property put in his daughter's name until that paper was served on me (meaning a suit was filed against him.) I did not accept McIntosh's proposition in regard to buying this property. McIntosh introduced me to Meriweather as the buyer of the property at the corner of Fourteenth and F Streets. It was about May or June, 1902, and Mr. Meriweather said: 'It is a good investment; what business do you follow?' I told him that I conducted a barber shop at 1101 V Street, N. W. Not one word was said to me by McIntosh in Meriweather's presence about having the title to this property put in my name and afterwards

transferred to McIntosh. I did not agree with McIntosh to have the titled transferred to him or his daughter, Hattie." (Rec. p. 15.)

Second. A parol contract made to purchase real estate in another's name in order to defraud judgment creditors is void and cannot be enforced.

It is intimated that appellee had the real estate, through fraud conveyed to him, after promising appellant to take and hold title as trustee for his daughter. The record shows that appellant would not have the property conveyed to himself in order to avoid judgment creditors and because he did not believe that he could secure the purchase money if said property was transferred direct to his daughter. This alone shows fraud on his part at the beginning. On page 2 of the record appellant said—

> "I was known as an agent by the Union Savings Bank people, and desired to have the conveyance by the Union Savings Bank first made to a different party and then by said party to my daughter."

The record further shows that appellant did not go to the Union Savings Bank; that he did not know what the bank received for the property until the day of taking testimony, and upon this point he said:

> "I was to pay $2,600.00 for the property. I arranged to pay through Mr. Meriweather to the Union Savings Bank. To-day is the first time that I heard that the Union Savings Bank received $2,289.00 for the property. I had an arrangement only through my agent. I did not go to the Union Savings Bank, I left the matter entirely with my agent, who is a real estate broker." (Rec., p. 9.)

The appellant, by his own testimony, admitted that the reason why he did not have the title put into his daughter's name, was because he knew that he could not borrow the balance of the purchase money, and the reason he did not have it put in his own name was that he had a few judgments against him, and knew that to put the title in his name it would simply tie it up. And upon this point he said:

> "I had a couple of judgments against me and did not desire the title in my name because I knew it would tie it up. There was no desire to defeat creditors, as I have no creditors who are pressing me, they are perfectly willing to give me a show. I did not have the title put in my daughter's name because my agent advised that it would be better to have it put in the name of a man, as he thought he could secure the loan easier." (Rec., p. 10.)

Equity will not compel specific performance where the party seeking the relief is guilty of fraud in connection with the transaction; in other words, equity declares that he who is seeking relief in a court of equity must come into court with clean hands. In the case of McClintock *vs.* Loisseau, 31 W. Va., 870, the Court, in speaking upon this subject, said:

> "Where a contract has been made to accomplish a fraudulent purpose, a court of equity will not at the suit of the party to the fraud, although the contract is executory, either compel its execution or decree its cancellation, nor after it has been executed set it aside and thus restore to the purchaser the property or his interest which he has fraudulently transferred: It will leave the parties in the same condition in which they have placed themselves."

In the case of Owens *vs.* Sharp, 12 Leigh, 427, which was a suit to establish a resulting trust in the property that had been conveyed to a third party to evade creditors, it was decided :

> "That where one makes a fraudulent bill of sales of a female slave, absolute on its face, in order to protect the property from creditors, but with a secret trust that the grantee shall hold the property for the benefit of the grantor's daughter, the daughter cannot in equity establish a secret trust and have a decree for the slave her increased profits."

The Court's opinion was that :

> "The deed being absolute, the plaintiff attempted to establish a secret trust, and, in doing so, showed the intent with which it was created. If the facts were reversed, if the trust had been expressed on the face of the deed, and the grantee had refused to execute it on the ground of fraud, he would then be compelled to allege his own fraud to protect himself, and could not be heard." Owens *vs.* Sharp, 12 Leigh, 427.

> "Where fraud is used in getting title in third party, thereby rendering him in possession, the party creating the fraud cannot recover."
> Kelly *vs.* Karsner, 72 Ala., 106.

Third. No trust of any kind arises, where property is conveyed to third party in pursuance of a parol agreement to hold in trust, when the third party pays the purchase money and takes to himself the title.

The next thing that seems to be of the highest importance in this case, is the payment of the purchase money.

The appellant has not shown by the record or in any other manner where he has ever spent one cent as payment or any portion thereof of the purchase money, nor has he shown where he has assumed any obligation to pay the purchase money or any part whatever, but on the contrary, the appellant upon oath said :

> "I did not spend any money in the purchase of this property. I would have spent some money and redeemed the property out of the hands of the party, had it not been that he refused to take the money as agreed upon." (Rec., p. 10.)

It is contended by the appellant that he found the piece of property and that he, through his agent, made known to appellee that the said property was for sale and upon this theory he claims that on account of spending a great deal of time, but no money, in trying to get possession of the property or the title to the same, that this is a sufficient consideration to entitle him to the relief which he seeks.

If this contention is to prevail, every man who has purchased a piece of real estate in the District of Columbia is in danger of being brought into a court of equity and having his holding the legal title to real estate declared a resulting trust in favor of someone who has spent some time, but no money, in trying to purchase the property he happens to hold.

It is claimed that appellee was to take title in his name, and that appellant's alleged agent was to attend to the entire matter for him, all of which allegations are denied by appellee; but granting, for the sake of argument, that the appellant did employ an agent to purchase this property, and that appellee did agree to act as

trustee, then, as a matter of law, he was in this capacity acting as agent, and whenever an agent is employed to buy for his principal, but afterwards buys for himself, with his own money, and denies acting as agent or trustee, he cannot be forced to convey to his principal. In the case of Nash *vs.* Jones, which is a case similar to the one at bar, the Court, in delivering its opinion, said :

> " Where a man merely employs an agent to buy an estate, who buys it for himself and denies the trust, and no part of the purchase money is paid by the principal, and there is no written agreement, he cannot compel the agent to convey the estate to him, as that would be in violation of the statute of frauds."
>
> Nash *vs.* Jones, 41 W. Va., 769.

In another case similar to the one before this court, which is the case of Watson *vs.* Erb, 33 O., 835, the plaintiff in that case alleged that he made a parol agreement with the defendant to buy a tract of land ; that he was not to be known as the buyer (giving defendant his reasons) ; that defendant was to buy the land with his own money and take title to himself and then transfer the same to plaintiff. To all of this defendant agreed. Just before the land was purchased, defendant changed his mind, purchased the land in his own name, paid part of the purchase money and gave his own obligations to pay the balance in one and two years. After the deal was closed, plaintiff demanded the defendant to convey to him the property, but defendant refused. The Court, in deciding the case, said :

> " That a mere breach of a parol contract to convey to plaintiff (plaintiff not paying the purchase

> money or any part thereof) is not such a fraud upon him as authorizes the Court to decree a trust in the land and compel its execution."
>
> Watson *vs.* Erb, 33 O., 835.
> See also Am. & Eng. Inc. Vol. 10, p. 11 and 12.

It appears of record that whatever money was paid at the time of purchase, was paid by the appellee and the purchase or balance of the purchase was secured by appellee's own obligation (Rec., p. 15), and taking this fact, whatever the oral or parol agreement may have been between the parties hereto, such agreement, if valid, was never performed on the part of the appellant, because in the alleged agreement the appellee was not to pay out any money, and by the breach of appellant's part of the alleged contract, it was then at the option of the appellee to do or not to do whatever was agreed upon in the said alleged contract. In the case of Howland *vs.* Blake, the complainant asked the Court that certain property held by the defendant be decreed to be held in trust for him upon the grounds set up in an oral agreement. The Court in the last clause of its opinion, said:

> "Unless the equity of redemption of Howland was kept alive by the alleged agreement with Taylor, he had no interest which could sustain a parol agreement by the defendant, to buy the property for his benefit and to convey to him when required. Such an agreement is one creating a trust or interest in land which cannot be sustained under the statute of frauds. It is a naked promise by one to buy lands for another in his own name, or pay for them with his own money and hold them for the benefit of another. It cannot be enforced in equity and is void."
>
> Howland *vs.* Blake, 27 U. S., 628.

The appellant claims further relief in that he asked the appellee to advance him money toward the purchase of this property, but appellee in his testimony declared that:

> "I never loaned McIntosh a dollar in my life and I never borrowed any from him." (Rec. p. 15.)

All money paid toward the purchase of this property was paid by the appellee in cash and on his credit, so that, no part of the purchase money was paid by the appellant nor did he assume any of the obligations to pay the purchase money or any portion thereof. Story in speaking of resulting trust says:

> "That the doctrine of resulting trust is strictly limited to cases where the purchase has been made in the name of one person and the purchase money has been paid by another." 2nd. Story's Jur. Sec. 1201a.

In view of all the facts in this case, together with the several authorities in support thereof, it is respectfully submitted that the decree dismissing the appellant's bill of complaint in the Court below is correct and should be affirmed.

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